



Minority Report—Mr Scott Morrison MP,  
Senator the Hon Michael Ronaldson,  
Senator Simon Birmingham, Liberal Party of  
Australia, Hon Bruce Scott, The Nationals

## **Recommendation**

Reform of our national system of campaign finance, in particular to address the recent revelations of serious illegal activity in Wollongong, NSW, cannot be addressed by any one measure in isolation. The Government's piecemeal approach to this issue, as represented in this Bill, is not supported by the Coalition Party members of the committee. Accordingly we propose that consideration of the tax deductibility measures contained in this Bill be deferred until they can be assessed as part of the committee's comprehensive review of campaign finance.

**Recommendation 1**

**That consideration by the Senate of the proposal by the Government for the removal of tax deductibility for contributions and gifts made to political parties be deferred until such time that the committee has had the opportunity to conclude its broader inquiry into the 2007 federal election, including the extensive review of issues relating to campaign finance reform, furthermore no consideration should be given to the Bill until the Government makes its Green Paper public.**

**Coalition Party members oppose the recommendations of the majority report**

The Coalition Parties have a deep and genuine commitment to address the crisis of confidence in the Australian political system caused by the revelation of alleged illegal activity involving ALP donors and ALP Councillors on Wollongong Council.

A key element of addressing this crisis is to undertake a thorough review of our campaign finance regime at both state and federal levels to ensure:

- a) that there are sufficient authorities, investigatory powers and enforcement measures to prevent such illegal acts in the future, and
- b) the removal of weaknesses in our legislative and regulatory frameworks that may give rise to an environment where such illegality could take place in the future.

To this end the Coalition put forward a motion in the Senate by Senator Ronaldson, for a comprehensive reference to the Joint Standing Committee on Electoral Matters to undertake an extensive inquiry into campaign finance.

This motion was opposed by the Government, but supported by all other parties in the Senate. The committee at its first meeting, agreed to deal with this reference concurrently with a general reference from the Special Minister of State, inquiring into the conduct of the 2007 federal election. The Special Minister of State has also announced a Green Paper process on these issues and introduced a Bill containing a number of measures relating to changes in campaign finance laws.

The Coalition believes in confronting this issue by dealing systematically and comprehensively with the challenges that flow from the illegal activity revealed in Wollongong.

By contrast the Government has embarked on a piecemeal approach, evidenced by their insistence to progress the Bill, in isolation to the broader review to be undertaken by the committee at the request of the Senate, or even the Government's own Green Paper process.

It should also be noted that the measures contained in this Bill were not identified by the Government in response to revelations of alleged illegal behaviour by ALP donors and Councillors in Wollongong. Rather the mandate for this Bill is drawn from the change to the ALP's Policy Platform at the National Convention in Sydney in 2004.

In identifying this change to ALP policy, no reference was made to revenue savings that might be achieved, rather the policy was based on securing a political advantage for the ALP. This is the true motivation for the Government's urgency relating to this Bill.

Coalition Party members of the Committee, together with Senator Bob Brown of the Greens, have opposed this inquiry proceeding in isolation, preferring that the matters referred by the Senate in relation to the Bill, be taken up as part of the committee's broader inquiry. This position was rejected by Government members of the committee on the casting vote of the Government Chairman.

As a result of the inquiry now being undertaken, Coalition Party members of the committee maintain their opposition to the progress of this Bill, until such time as other inquiries are completed to assess these issues in their entirety. Coalition Party members of the committee also believe the inquiry has failed to demonstrate the urgency of this matter and why it should be treated in isolation.

Government members of the committee are also ignoring the views of the community in relation to this matter.

In fact two thirds of the submissions received by the Inquiry either opposed the removal of tax deductibility or required such changes to be counterbalanced by other measures. In evidence before the Committee this position was well summarised by Associate Professor Graeme Orr from the Democratic Audit of Australia who said:

.. it is very premature to do away with a form of encouraging small scale donating at the same time as seriously considering, in a few months time, the banning of large corporate and organisational donations. That is going to lead to serious questions as to where parties get the money from and deductibility, or matching funds, is something that needs to be kept in the mix.<sup>1</sup>

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1 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 36.

In other words, we should not proceed with these measures in isolation. By addressing this matter in isolation the committee is unable to conduct a proper assessment of the comparative benefits or otherwise of these measures.

It is therefore impossible to reach the conclusion advanced in the majority report that 'it does not seem necessary to the committee that the mix of funding mechanisms should retain an unbalanced and inequitable system of political contributions through tax deductibility' (paragraph 2.76). The committee has undertaken no examination of 'the mix of funding mechanisms' in this review and therefore cannot comment either way.

Key issues for Coalition party members of the committee arising from the Inquiry are noted below.

## **1. Projected savings generated by the proposed changes**

**Treasury estimates of revenue savings are overstated and represent a bold guess. There is no reliable data on claim rates, levels of donation less than \$1,500 or current or the projected size of party membership. The absence of such data undermines the revenue estimates and therefore any argument for urgency, based on fiscal necessity, for this Bill.**

Treasury estimates that the measures contained in the Bill will save \$31.4 million over four years to 2011-12 commencing in 2009-10. In their appearance before the committee, Treasury officials confirmed that the costing comprised two components, namely savings achieved by the removal of deductions for a) Party membership subscriptions and b) contributions.<sup>2</sup>

According to Treasury officials the membership component of the costing is \$4.3 million in each year, based on membership estimates obtained from a study undertaken by the Australian National University.<sup>3</sup> In evidence Treasury officials qualified the veracity of these estimates as follows:

the thesis in the article is that parties do not give out numbers, because membership may be declining and they do not want to reveal that. **I do not know whether that is true or not** (emphasis added).<sup>4</sup>

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2 Gallagher P, The Treasury, transcript, 29 April 2008, p. 3.

3 Gallagher P, The Treasury, transcript, 29 April 2008, p. 5.

4 Gallagher P, The Treasury, transcript, 29 April 2008, p. 5.

Furthermore, questions by the Chair confirmed that the \$4.3 million figure used by Treasury was based on estimates of a 90 per cent claim rate.<sup>5</sup> No evidence was presented by Treasury or any other source to substantiate this assumption. In fact in response to a question on notice inquiring as to the behaviour of taxpayers in relation to making claims for political deduction they confirmed that:

The Australian Taxation office does not have data on the median deduction claimed for gifts and contributions or the number of taxpayers claiming any deduction.<sup>6</sup>

It is therefore not surprising that even in the majority report it is acknowledged that 'it is not clear what proportion of party members actually claim a tax deduction for their party membership fees' (paragraph 2.54).

In relation to donations, Treasury officials also confirmed in evidence the difficulties of estimating revenue savings relating to claims for gifts and donations:

In the data we have from the Australian Electoral Commission website for 2003-04 and 2004-05, the \$1,500 disclosure threshold was already in place and there were very few donations disclosed below that level; therefore, we have had to make assumptions about what the potential level of donations below that level was in order to take up that distribution to probably being about the actual size that it was.<sup>7</sup>

In other words, Treasury had no knowledge of the amount or value of donations less than \$1,500, which is the subject of this Bill. Treasury then derived an estimate based on a series of assumptions to arrive at a figure. While Coalition members of the committee do not doubt the internal logic of Treasury's reasoning, we conclude that the result is totally arbitrary as it relies completely on the reliability of the base data, which in this case was non-existent.

Treasury officials similarly acknowledged this point by drawing the committee's attention to their qualifications noted in the official published release of the election costings, namely:

Given the range of implicit and explicit assumptions used to produce these revenue estimates it should be noted that **actual outcomes may vary from these estimates** (emphasis added) if assumptions or behaviour change from our expectation. In particular, data on political party membership fees received is

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5 Gallagher P, The Treasury, transcript, 29 April 2008, p. 11.

6 The Treasury, submission 10, p. 3.

7 Gallagher P, The Treasury, transcript, 29 April 2008, p. 6.

poor and data on donations below the AEC disclosure threshold is also poor.<sup>8</sup>

Treasury officials also later noted that 'It is not that we have no idea. We have some idea, but we have admitted that that idea is imprecise because of the availability of information'.<sup>9</sup>

The unreliability of the revenue estimates was also noted by Professor Orr, who drew attention to the implications for overall donation and claim rates, based on the estimates, which suggest the revenue estimates are unlikely:

.. if you are talking about \$10 million per year you are talking about \$30 million of donations at, say, a marginal rate of 30 per cent, which is roughly the corporate rate. Thirty million dollars is a lot of \$1,500 contributions or party memberships. I do not want to criticise the Treasury modelling without seeing it, but part of the problem we have is that we have not had a system where it is itemised on tax forms and we do not really have enough data on claiming, on where people's donations are going and so on.<sup>10</sup>

## **2. Impact of changes for individual taxpayers**

**Equity arguments advanced by those in favour of removing tax deductions that they confer greater value to people on higher taxable incomes are generic and not specific to this measure. Such arguments could be used to argue against any tax deductibility measure, including work related expenses, which the majority report continues to support.**

The majority report relies heavily on the claimed inequity of these measures in forming its conclusion. At one point the report makes the bold claim in paragraph 2.31 that 'the committee was told that inequity is the most likely result of any provision granting tax deductibility for party membership and donations and inequity is exacerbated with the current high threshold of \$1,500'. This statement is not substantiated or referenced, yet appears in the report as a statement of fact.

The arguments for inequity were not raised unprompted in the hearing undertaken by the committee, and were raised only by the Chair late in the hearing, quoting from the submission received after deadline by Mr Sempill and Dr Tham as follows:

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8 Gallagher P, The Treasury, transcript, 29 April 2008, p. 6.

9 Gallagher P, The Treasury, transcript, 29 April 2008, p. 7.

10 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 33.

the current provisions are inequitable on several counts. They discriminate against those who do not have to pay tax. Job seekers, retirees without income, full-time parents and students not engaged in paid work who make small contributions or take out party membership are denied the benefit of the current system.<sup>11</sup>

In response to questioning by the Chair in relation to this statement, Professor Orr put this issue in its proper perspective:

As I said, you might as well say that any form of tax deductibility, including donations to charity, discriminate against such people.<sup>12</sup>

The only real argument advanced for this initiative in the majority report is an argument for the abolition of tax deductions in general. Coalition Party members of the committee do not believe such an argument can be accepted to justify the isolated progression of the measure contained in this Bill.

In further response to the Chairman's comments regarding inequity, the advantage to Members of Parliament over members of the community was highlighted in evidence given. Members of Parliament who want to donate heavily to their own political party, for example, for whatever reason, are allowed unlimited tax deductibility. A member of the general community who currently at least has limited access to tax deductibility will now be totally prohibited from claiming a deduction.

**Senator RONALDSON** – But under this legislation a member of the community who wants to make a donation to engage themselves in the political process cannot get a deduction.

**Mr Coles** – It goes back to the fundamental principles in tax law that an amount is deductible if it is incurred in gaining your assessable income. We are maintaining that principle for members of parliament, office holders and employees.<sup>13</sup>

The Coalition members of the committee believe that the inequity of the above situation is not conducive to a balanced approach to campaign finance reform.

### **3. Impact of changes for business**

**The Bill fails to deal with the real issue of fostering a culture of influence procurement, preferring to penalise small business donors, while allowing**

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11 Mr Daryl Melham MP, transcript, 29 April 2008, p. 32.

12 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 32.

13 Transcript, 29 April 2008, p. 15.

**unions and other non tax paying entities to channel funds, tax free, to their political parties of choice.**

The nature of alleged illegal activity involving ALP business donors and ALP Councillors on Wollongong Council, will not be impacted by the measures contained in this Bill. These are the issues that created what Professor Orr described in his evidence as the ‘crisis of confidence in the political campaign finance system’.<sup>14</sup>

The key issues associated with the illegal events in Wollongong had nothing to do with the availability of tax deductions. Yet this is the issue the Government believes must be most urgently addressed in relation to business donations.

In the hearing, Treasury officials confirmed that those involved in the business of securing influence will continue to be able to claim deductions under the general provisions, while small businesses will be denied.

**Senator BIRMINGHAM** – This might clear things up. Under existing laws, how are the expenses of a lobbyist company in particular – there are many of them out there – whose core business is lobbying and access to government, treated in relation to their engagement with political parties and politicians and government? That is without necessarily getting into meals, which I understand become a different component. Let us call it a stand-up, networking function with no meal provided. If a lobbying company attends a function with the Prime Minister or a premier, are they able to claim as an expense the entirety of that cost and up to what reasonable limit?

**Mr Hardy** – Basically, yes. If their business role is lobbying, networking and advocacy and they go to a function with political leaders in order to network, advocate and lobby, that will be just a business deduction for their business activity. There is no cap to that expense.<sup>15</sup>

Furthermore, supplementary responses from the Treasury to questions on notice reveal that while the Bill will deny businesses tax deductibility for donations, non tax paying entities such as unions and charitable organisations, are permitted to secure contributions from tax payers on a deductible basis, and pass these resources onto a political party, non capped and tax free in the form of a donation.

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14 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 27.

15 Transcript, 29 April 2008, p. 21.



There are no special provisions in the tax law where the income of a tax exempt entity is taxed because that entity donates to a political party.

Schedule 1 of the Bill does not prevent not-for-profit organisations from donating to political parties – this includes not-for-profit organisations that receive funds that were tax deductible to the giver by way of either the general deduction provision, or because the organisation is a deductible gift recipient.<sup>16</sup>

Such anomalies highlight the lack of balance put forward in this Bill and why such measures must be considered as part of a broader review to ensure such inequities can be addressed in other measures, as part of boarder package of reforms.

**Mr Scott Morrison MP**

**Senator the Hon Michael Ronaldson**

**Hon Bruce Scott MP**

**Senator Simon Birmingham**

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<sup>16</sup> The Treasury, submission 10, p. 2

